

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KRISTI & JARED VONDEYLEN, )  
 )  
 Plaintiffs, ) C.A. No. 22-703-CFC  
 )  
 v. )  
 )  
 )  
 COMPLETE RESERVATION )  
 SOLUTIONS, LLC, )  
 )  
 Defendant. )

Monday, November 21, 2022  
11:30 a.m.  
Motion Hearing

844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE COLM F. CONNOLLY  
United States District Court Judge

APPEARANCES:

KIMMEL & SILVERMAN, P.C.  
BY: MARY HIGGINS, ESQ.

Counsel for the Plaintiffs

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P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at 11:30 a.m.)

**THE COURT:** Ms. Higgins, good morning.

**MS. HIGGINS:** Would you like me --

**THE COURT:** Okay. So this is the time set aside for a default. You filed a motion for a default judgment.

Unless I'm missing something, there's no discussion in the motion of the standard that I would apply the applicable Third Circuit case law to guide me to know whether you have alleged a sufficient basis by which I could grant a default judgment.

And just so you'll know, I mean, I think somebody asked if we could do this remotely, and I had said no because we're not doing procedures remotely absent some extraordinary circumstance.

You know, I don't prepare on the merits until within 24 hours of a hearing. So when I looked at this, I thought, oh, wait a second. We're going to -- this is going to be a problem.

Did you file any papers that set forth the Third Circuit standards and what I would look to in terms

1 of deciding whether to grant a motion for a default  
2 judgment?

3 **MS. HIGGINS:** Well, the only thing that was  
4 filed was at D.I. 9.1, which was the Memorandum of Points  
5 and Authorities.

6 **THE COURT:** Yeah. Well...

7 **MS. HIGGINS:** So you're looking for standards  
8 under Federal Rule of Evidence 55(b)(2) --

9 **THE COURT:** Wait. What did you say you filed?  
10 D.I. 9.1?

11 **MS. HIGGINS:** Yes.

12 **THE COURT:** So there is some -- and it has  
13 points and authorities?

14 **MS. HIGGINS:** Plaintiff's memorandum of law in  
15 support of motion for default judgments against --

16 **THE COURT:** Okay. So that, I just don't have  
17 it. I didn't realize that. So hold on a second. Sounds  
18 like you did do something.

19 **MS. HIGGINS:** You know, my assistant told me  
20 that we had two of these served as courtesy copies, and I  
21 wasn't sure because it wasn't marked in our pleadings  
22 filed. So we had someone redeliver them. And I also --  
23 this morning.

24 And I then I also have two copies here with me  
25 today as well, because she said this was done, but I

1 didn't see it in the pleadings where we normally get a  
2 stamped copy to approve it. So --

3 **THE COURT:** Yeah. And I don't have it. It may  
4 be in CM/ECF. But I'll tell you, I don't have it, or a  
5 copy of it. I have -- what I have is D.I. 9 and...

6 **MS. HIGGINS:** 9.1. Nine-one is --

7 **THE COURT:** Okay. I have something marked  
8 D.I. 9-1, and I've read that. Okay. So actually, we're  
9 referring to the same thing then. Okay. No, I've read  
10 that.

11 **MS. HIGGINS:** Okay. So that -- are you saying  
12 that that's missing the standard under Rule 55(b) for  
13 default judgment?

14 **THE COURT:** Yeah. I mean, the only legal  
15 assertion relating to the default, it says, on Page 6,  
16 "Pursuant to Rule 55(a), a default judgment is proper when  
17 a party against whom a judgment for affirmative relief is  
18 sought has failed to plead or otherwise defend," end  
19 quote. "When a defendant fails to respond, its default is  
20 considered an admission of the plaintiff's well-pleaded  
21 allegations of fact related to liability," end quote.

22 And that's actually citing a Fifth Circuit  
23 case.

24 **MS. HIGGINS:** Right.

25 **THE COURT:** But there's nothing that tells me

1 what I should be asking or assessing. And I can tell you,  
2 the few times as a judge I've had a default judgment, I've  
3 had that.

4 **MS. HIGGINS:** Okay.

5 **THE COURT:** And, you know, I don't --

6 **MS. HIGGINS:** Yeah.

7 **THE COURT:** -- I don't want to do something I  
8 shouldn't do.

9 **MS. HIGGINS:** Yeah. I understand.

10 **THE COURT:** Right. And --

11 **MS. HIGGINS:** We'd be happy to redraft it and  
12 refile, if that would make you more comfortable.

13 **THE COURT:** I don't need something -- I'll tell  
14 you what, why don't you, instead of redoing everything,  
15 why don't you just look at the case law and say, hey, you  
16 know, this is what you need to do. You need to make these  
17 findings in order for you to properly grant a motion for  
18 default judgment.

19 And let me give you an example of why it comes  
20 up. Because when I read the papers, I don't see anywhere  
21 where there is any kind of affidavit to support the  
22 allegation that the calls came from the defendant.

23 **MS. HIGGINS:** Okay.

24 **THE COURT:** So it may be that the plaintiff  
25 would say because the person identified themselves as an

1 agent of, or representative of Complete Reservation  
2 Solutions. You know, that's where I got that. In other  
3 words, it doesn't look like somebody did a caller ID check  
4 or anything like that to make the connection. And I don't  
5 know if I even need that. Right.

6 I mean, you know, we are such a busy court. We  
7 rely on the lawyers to at least get the basic case law in  
8 front of us. I've got, you know, 400-and-some cases. But  
9 my recollection is that there's certain findings that the  
10 Third Circuit would want me to put on the record.

11 **MS. HIGGINS:** Okay. And so the statement that  
12 failure to answer is an admission of the well-pled facts  
13 in the pleadings is not adequate to establish those  
14 facts --

15 **THE COURT:** So I don't know. If you're telling  
16 me it is, but I'm --

17 **MS. HIGGINS:** They cited -- this was written,  
18 and I did read it, and I knew that they put in a Fifth  
19 Circuit case in there for that proposition.

20 In my research, what I was able to come up with  
21 in terms of Third Circuit law was an unpublished Federal  
22 appendix case from the Third Circuit on that point, citing  
23 to Wright and Miller. And that was in *Handle v.*  
24 *Postmaster General*, which is 806 F Appendix -- Federal  
25 Appendix 95, Third Circuit, 2020. "Without an answer or

1 other response to a complaint, the entry of default  
2 operates as an admission of the factual allegations in the  
3 complaint."

4 But as I said, that's unpublished, Third  
5 Circuit.

6 **THE COURT:** Okay. And I don't dispute that,  
7 and that makes a lot of sense to me.

8 Is there anything else I need to decide?

9 **MS. HIGGINS:** Well, what we were going to seek  
10 was, one, the default judgment because the Court has  
11 jurisdiction, the facts have been admitted in the  
12 complaint. So therefore, that cause of action that we  
13 have alleged under the TCPA is established based on those  
14 facts.

15 And then I was going to seek relief in terms of  
16 damages, which would be actual and statutory as pled in  
17 the complaint.

18 I can go through the law and how the facts  
19 support the law for that award.

20 **THE COURT:** All right. So for instance, why  
21 don't you take a look at *Chamberlain* against *Giampapa*, at  
22 210 F.3d. 154. It's a Third Circuit case from 2000. It  
23 says that three factors control whether a default judgment  
24 should be granted, right. It lays out the factors.

25 I mean, you have to do that kind of work. You

1 can't expect me to do what I've just done, which is, you  
2 know, conduct Westlaw research and get this. That's  
3 really on an attorney. Okay.

4 **MS. HIGGINS:** Right. Oh, absolutely,  
5 Your Honor. I apologize.

6 **THE COURT:** Okay. But you can keep your motion  
7 the way it is, but why don't you just supplement it. You  
8 can start with that case, and just briefly discuss the  
9 factors, okay.

10 And then, you know, I can have a hearing and I  
11 do it -- conduct the hearing in an appropriate way and  
12 make a decision that would withstand scrutiny of the Third  
13 Circuit. Because if I were to just sign this, I think it  
14 would be reversible error.

15 **MS. HIGGINS:** Okay.

16 **THE COURT:** Okay. And I don't think you want  
17 that anymore than I want that.

18 **MS. HIGGINS:** Well, thank you for your  
19 leniency.

20 **THE COURT:** You know, I feel bad in a way that  
21 were you called in, but that's just the nature of our  
22 caseload. We're so busy, you know, by the time I start  
23 reviewing these papers, it's too late to call off the  
24 hearing. And I thought maybe you might come in and have  
25 the case law and we could discuss it or that you would

1 have pointed me to something in the record that I didn't  
2 see.

3 But let's do that, okay?

4 **MS. HIGGINS:** Sounds good. Thank you.

5 **THE COURT:** Now, I'm prepared, because, you  
6 know, it's a very interesting matter.

7 Are you doing this with somebody from another  
8 national law firm or something?

9 **MS. HIGGINS:** I'm also an employee of  
10 Kimmel & Silverman, and this is their case. The  
11 plaintiffs are from Minnesota. The defendant is in  
12 Delaware. That's why I'm handling it for them.

13 **THE COURT:** Okay. I get the impression,  
14 though, they do these a lot, I'm going to guess. Right?

15 **MS. HIGGINS:** I'm sorry?

16 **THE COURT:** The national firm -- the Minnesota  
17 firm probably does these all across the country, I'm going  
18 to guess.

19 **MS. HIGGINS:** Yes. Yes.

20 **THE COURT:** Right. And it seems like it's a  
21 worthwhile enterprise. So, you know, as soon as you get  
22 that paper to me, we'll move on it. Okay?

23 **MS. HIGGINS:** All right.

24 **THE COURT:** Make sense?

25 **MS. HIGGINS:** Yes.

1                   **THE COURT:** Okay. Thank you very much.

2                   Any questions?

3                   **MS. HIGGINS:** None.

4                   **THE COURT:** All right. Have a good day.

5                   **MS. HIGGINS:** You too.

6                   (The proceedings concluded at 11:43 a.m.)

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CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer  
Bonnie R. Archer  
Official Court Reporter  
U.S. District Court

MS. HIGGINS: [28] THE COURT: [28]  /  /s [1] 11/7  1  11:30 [2] 1/11 2/4 11:43 [1] 10/6 154 [1] 7/22  2  2000 [1] 7/22 2020 [1] 6/25 2022 [1] 1/11 21 [1] 1/11 210 F.3d. 154 [1] 7/22 22-703-CFC [1] 1/4 24 hours [1] 2/21  5  55 [3] 3/8 4/12 4/16  8  806 F [1] 6/24 844 [1] 1/14  9  9.1 [3] 3/4 3/10 4/6 95 [1] 6/25  A  a.m [3] 1/11 2/4 10/6 able [1] 6/20 absent [1] 2/18 absolutely [1] 8/4 accurate [1] 11/5 across [1] 9/17 action [1] 7/12 actual [1] 7/16 actually [2] 4/8 4/22 adequate [1] 6/13 admission [3] 4/20 6/12 7/2 admitted [1] 7/11 affidavit [1] 5/21 affirmative [1] 4/17 against [3] 3/15 4/17 7/21 agent [1] 6/1 all [4] 7/20 9/17 9/23 10/4 allegation [1] 5/22 allegations [2] 4/21 7/2 alleged [2] 2/14 7/13 also [3] 3/22 3/24 9/9 another [1] 9/7 answer [2] 6/12 6/25 any [3] 2/24 5/21 10/2 anymore [1] 8/17 anything [2] 6/4 7/8 anywhere [1] 5/20 apologize [1] 8/5 APPEARANCES [1] 1/19 appendix [3] 6/22 6/24 6/25 Appendix 95 [1] 6/25 applicable [1] 2/13 apply [1] 2/13 appropriate [1] 8/11 approve [1] 4/2 Archer [2] 11/7 11/8 are [4] 4/11 6/6 9/7 9/11	as [9] 3/20 3/25 5/2 5/25 7/2 7/4 7/16 9/21 9/21 aside [1] 2/9 asked [1] 2/17 asking [1] 5/1 assertion [1] 4/15 assessing [1] 5/1 assistant [1] 3/19 attorney [1] 8/3 authorities [2] 3/5 3/13 award [1] 7/19  B  bad [1] 8/20 based [1] 7/13 basic [1] 6/7 basis [1] 2/14 be [8] 2/23 4/4 5/1 5/11 5/24 7/16 7/24 8/14 because [8] 2/18 3/21 3/25 5/20 5/25 7/10 8/13 9/5 been [1] 7/11 BEFORE [1] 1/16 beginning [1] 2/3 Bonnie [2] 11/7 11/8 briefly [1] 8/8 busy [2] 6/6 8/22  C  C.A [1] 1/4 call [1] 8/23 called [1] 8/21 caller [1] 6/3 calls [1] 5/22 came [1] 5/22 can [5] 5/1 7/18 8/6 8/8 8/10 can't [1] 8/1 case [10] 2/13 4/23 5/15 6/7 6/19 6/22 7/22 8/8 8/25 9/10 caseload [1] 8/22 cases [1] 6/8 cause [1] 7/12 certain [1] 6/9 CERTIFICATE [1] 11/2 certify [1] 11/4 CFC [1] 1/4 Chamberlain [1] 7/21 check [1] 6/3 Circuit [11] 2/13 2/25 4/22 6/10 6/19 6/21 6/22 6/25 7/5 7/22 8/13 circumstance [1] 2/19 cited [1] 6/17 citing [2] 4/22 6/22 CM [1] 4/4 CM/ECF [1] 4/4 COLM [1] 1/16 come [2] 6/20 8/24 comes [1] 5/19 comfortable [1] 5/12 commenced [1] 2/3 complaint [4] 7/1 7/3 7/12 7/17 COMPLETE [2] 1/6 6/1 concluded [1] 10/6 conduct [2] 8/2 8/11 connection [1] 6/4 CONNOLLY [1] 1/16 considered [1] 4/20 control [1] 7/23	copies [2] 3/20 3/24 copy [2] 4/2 4/5 could [3] 2/15 2/17 8/25 Counsel [1] 1/22 country [1] 9/17 court [7] 1/1 1/16 6/6 7/10 11/2 11/8 11/9 courtesy [1] 3/20 courtroom [1] 2/3  D  D.I. [4] 3/4 3/10 4/5 4/8 D.I. 9 [1] 4/5 D.I. 9-1 [1] 4/8 D.I. 9.1 [2] 3/4 3/10 damages [1] 7/16 day [1] 10/4 decide [1] 7/8 deciding [1] 3/1 decision [1] 8/12 default [14] defend [1] 4/18 defendant [4] 1/8 4/19 5/22 9/11 DELAWARE [3] 1/2 1/14 9/12 did [5] 2/24 3/9 3/18 6/3 6/18 didn't [3] 3/17 4/1 9/1 discuss [2] 8/8 8/25 discussion [1] 2/12 dispute [1] 7/6 DISTRICT [4] 1/1 1/2 1/16 11/9 do [10] 2/17 3/18 5/7 5/8 5/16 7/25 8/1 8/11 9/3 9/14 does [1] 9/17 doesn't [1] 6/3 doing [2] 2/18 9/7 don't [16] done [2] 3/25 8/1  E  ECF [1] 4/4 else [1] 7/8 employee [1] 9/9 end [2] 4/18 4/21 enterprise [1] 9/21 entry [1] 7/1 error [1] 8/14 ESQ [1] 1/21 establish [1] 6/13 established [1] 7/13 even [1] 6/5 everything [1] 5/14 Evidence [1] 3/8 example [1] 5/19 expect [1] 8/1 extraordinary [1] 2/19  F  F.3d. [1] 7/22 fact [1] 4/21 factors [3] 7/23 7/24 8/9 facts [5] 6/12 6/14 7/11 7/14 7/18 factual [1] 7/2 failed [1] 4/18 fails [1] 4/19 failure [1] 6/12 Federal [3] 3/8 6/21 6/24 feel [1] 8/20	few [1] 5/2 Fifth [2] 4/22 6/18 file [1] 2/24 filed [4] 2/9 3/4 3/9 3/22 findings [2] 5/17 6/9 firm [3] 9/8 9/16 9/17 foregoing [1] 11/4 forth [1] 2/24 front [1] 6/8  G  General [1] 6/24 get [5] 4/1 6/7 8/2 9/13 9/21 Giampapa [1] 7/21 give [1] 5/19 go [1] 7/18 going [6] 2/22 2/23 7/9 7/15 9/14 9/17 good [3] 2/6 9/4 10/4 got [2] 6/2 6/8 grant [3] 2/15 3/1 5/17 granted [1] 7/24 guess [2] 9/14 9/18 guide [1] 2/13  H  had [5] 2/17 3/20 3/22 5/2 5/3 Handle [1] 6/23 handling [1] 9/12 happy [1] 5/11 has [3] 3/12 4/18 7/10 have [15] hearing [5] 1/12 2/21 8/10 8/11 8/24 here [1] 3/24 hereby [1] 11/4 hey [1] 5/15 HIGGINS [2] 1/21 2/6 hold [1] 3/17 Honor [1] 8/5 HONORABLE [1] 1/16 hours [1] 2/21 how [1] 7/18  I  I'll [2] 4/4 5/13 I'm [8] 2/11 6/16 9/5 9/9 9/12 9/14 9/15 9/17 I've [6] 4/8 4/9 5/2 5/2 6/8 8/1 ID [1] 6/3 identified [1] 5/25 impression [1] 9/13 instance [1] 7/20 instead [1] 5/14 interesting [1] 9/6 is [22] it [26] it's [4] 7/22 8/23 9/6 9/20 its [1] 4/19  J  JARED [1] 1/3 judge [2] 1/16 5/2 judgment [10] 2/10 2/15 3/2 4/13 4/16 4/17 5/2 5/18 7/10 7/23 judgments [1] 3/15 jurisdiction [1] 7/11 just [8] 2/16 3/16 5/15 8/1 8/7 8/8 8/13 8/21
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